Ishwar Singh vs. Baga Ram
(S.B.Criminal Revision No.394/93)

Dated:- 9.2.2007.

HON'BLE MR.JUSTICE G.S.SARRAF

Mr. P.N. Mohnani)for the petitioner.
Miss Yogita Mohnani)
Mr. L.R.Choudhary, for the respondent.

REPORTABLE

This revision petition is directed against the order dated 8.2.1993 passed by Munsif and Judicial Magistrate, Ist Class, Shivganj dismissing the complaint filed by the petitioner and ordering filing of a complaint against the petitioner u/s 211 I.P.C.

Facts in brief are that the petitioner filed a complaint on 10.3.1992 in the Court of Munsif and Judicial Magistrate, Ist Class, Shivganj against the respondent under Section 420 I.P.C.. The learned Magistrate registered the complaint and recorded the statement of the complainant u/s 200 Cr.P.C. and of the witnesses produced by him u/s 202 Cr.P.C. Thereafter, considering that a detailed inquiry was needed, the learned Magistrate by order dated 17.7.1992 referred the matter to the S.H.O., Shivganj for detailed inquiry and report. In compliance of this order, S.H.O. Shivganj, after inquiry, submitted his report in the Court of the Magistrate. Learned Magistrate after considering the statements recorded u/ss. 200 and 202 Cr.P.C. and the inquiry report submitted by the S.H.O., Shivganj dismissed the

complaint and ordered that a complaint be filed against the petitioner u/s 211 IPC for filing false complaint. Aggrieved by this order, the petitioner has filed this revision petition.

The short controversy involved in this case is that whether the learned Magistrate after recording the statements of the complainant u/s 200 Cr.P.C. and of witnesses u/s 202 Cr.P.C. was competent to refer the matter to the police for a detailed inquiry.

On going through the provisions of Section 202 Cr.P.C., I am of the opinion that in a particular case, if a Magistrate postpones the issue of summons then two courses are open to him. He can either make an inquiry into the case himself or direct an investigation to be made by a police officer or by such other persons as he thinks fit. If he makes an inquiry himself , he cannot direct investigation and if he directs an investigation, he cannot inquire into the matter himself. In other words, once the Magistrate has started inquiring into the case himself, he cannot follow the next alternative, i.e., direct the investigation to be made by a police officer or such other person as he thinks fit. In this regard, I prefer to follow the view taken by a D.B. of Calcutta High Court in 1981 Cr.L.J. 1002. I do not agree with the view of a learned Single Judge in 1987(3) Crimes, 379.

In the result, the impugned order of Munsif and Judicial Magistrate, Ist Class, Shivganj is set aside and the case is remanded to the learned Magistrate to proceed with the case in accordance with

law on the basis of the statements recorded under Section 200 Cr.P.C. and the inquiry made by him under Section 202 Cr.P.C. .

(G.S.SARRAF),J.